**UNITED STATES DISTRICT COURT**
**DISTRICT OF MASSACHUSETTS**

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| **STARR INDEMNITY & LIABILITY COMPANY, as subrogee of Sprague Energy Corp., Plaintiff,** | ) | |
| | ) | **Civil Action No.:** |
| **v.** | ) | |
| **EXXON MOBIL CORPORATION, Defendant.** | ) | |

## PLAINTIFF'S COMPLAINT

NOW COMES the Plaintiff, Starr Indemnity & Liability Company (hereinafter, "Starr"), as subrogee of Sprague Energy Corp. (hereinafter, "Sprague"), in the above captioned matter, by and through its undersigned attorneys, HOLBROOK & MURPHY, and respectfully files this Complaint, seeking damages, along with costs, interest, and attorney's fees, in connection with damage to property resulting from the Defendant, Exxon Mobil Corporation's (hereinafter, "Exxon"), negligence, breach of implied warranty of workmanlike performance, breach of contract and responsibility under strict liability, in support whereof, the Plaintiff alleges the following:

## THE PARTIES

1. The Plaintiff, Starr Indemnity & Liability Company, is a Texas corporation, engaged in the business of insurance, with a principal place of business located at 399 Park Avenue, 8th Floor, New York, New York 10022.

2. Sprague Energy Corp. is a Delaware corporation, engaged in the business of supplying energy and refined products related thereto, as well as handling services, with its corporate headquarters located at 185 International Drive, Portsmouth, New Hampshire 03801.

3. The Defendant, Exxon Mobil Corporation, is a New Jersey corporation, engaged in the business of refining and marketing petroleum products, with its principal place of business located at 5959 Las Colinas Boulevard, Irving, Texas 75039-2298.

## JURISDICTION

4. This is a case of admiralty and maritime jurisdiction pursuant to 28 U.S.C. § 1333, as hereinafter more fully appears, and is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

## GENERAL ALLEGATIONS

5. On or around February 5, 2001, Sprague Energy Corp., the Plaintiff's insured, entered into a Dock Use Agreement, including the Attachments, A and B, appended thereto (hereinafter, "Dock Agreement" or "Agreement"), with the Defendant, Exxon Mobil Corporation, concerning vessel cargo discharge operations and management, among other things, at the Defendant's dock facilities located at 43 Beacham Street, Everett, Massachusetts 02149 (hereinafter, "Dock"), on the Mystic River, on the navigable waters of the United States.

6. At all times material hereto, the Plaintiff's insured, Sprague Energy Corp., owned an asphalt plant (hereinafter, "Plant") and related rights to use a pipeline (hereinafter, "Pipeline") located in Everett, Middlesex County, Massachusetts, near the Dock.

7. At all times material hereto, and in particular on or around June 19, 2014, Sprague Energy Corp. was insured by the Plaintiff in this action for various risks as to Sprague's use of berth space at the Defendant's Everett, Massachusetts Dock facility.

8. On or around June 19, 2014, the *T/V PALANCA SINGAPORE* (hereinafter, "Vessel") docked at the Defendant, Exxon's, Everett, Massachusetts Dock facility, carrying a cargo of asphalt bound for the Sprague asphalt Plant.

9. The Defendant, Exxon, its agent and/or employee, the Exxon Person in Charge (hereinafter, "Exxon PIC" or "PIC"), had an obligation to control, supervise, and/or otherwise oversee the discharge of asphalt from the Vessel to the Pipeline extending to the Sprague asphalt Plant, consistent with the provisions of the aforementioned Dock Use Agreement.

10. On or around June 19, 2014, the Exxon PIC managed, and/or through other Exxon agents and/or employees, controlled, supervised, and/or otherwise oversaw the discharge operations by, among other things, connecting the cargo hose(s) from the Dock facility and/or Pipeline to the Vessel's manifold and securing same with a hard, plastic-like "saddle", to facilitate transfer of the asphalt from the Vessel to the Pipeline extending to the Sprague asphalt Plant.

11. On or around June 19, 2014, the Defendant's PIC connected the subject cargo hose from Exxon's Dock facility, and/or from the Pipeline, to the Vessel's manifold.

12. On or around June 19, 2014, the Defendant's PIC, and/or through other Exxon agents and/or employees, improperly secured, and/or supervised the improper securing, of the "saddle" to the cargo, resulting in slack between the hose and the saddle.

13. On or around June 19, 2014, subsequent to the securing of the saddle to the cargo hose on the Vessel, one or more bends developed in the cargo hose during the discharge of asphalt from the Vessel to the Pipeline extending to the Sprague asphalt Plant, due to the improper positioning and/or securing of the "saddle" to the subject cargo hose.

14. On or around June 19, 2014, the subject cargo hose fractured at one or more of the bends referenced in Paragraph Twenty-seven (27) during discharge operations.

15. As a result of the hose fracture(s), approximately 4,200 gallons of asphalt spilled onto the Vessel, its equipment, the Dock, the equipment of the Dock facility, and the surrounding waters of the Mystic River in Everett, Massachusetts.

16. The spilled asphalt caused physical damage to the hose, Vessel, Dock facility, and/or other equipment and/or structures in the vicinity of the discharge, as well as environmental contamination of the surrounding waters of the Mystic River in Everett, Massachusetts.

17. Subsequent to the spillage of asphalt on or around June 19, 2014, the use of high-pressured water during cleanup operations, a method utilized for removing and dispersing asphalt from various surfaces, caused further property damage and/or environmental contamination.

18. Because of the aforementioned property damage and/or environmental contamination attributable to the spillage of asphalt onto the Vessel, Dock facility, equipment in the vicinity of the spill, and the surrounding waters of the Mystic River, the Plaintiff, Starr Indemnity & Liability Company, paid various sums and incurred costs and expenses to its insured, Sprague Energy Corp., for the damages, pursuant to the Insurance Policy Starr had issued to Sprague.

19. This action is brought by Sprague Energy Corp.'s insurer, Starr Indemnity & Liability Company, who paid the damages and losses referenced above, and who has a right to sue in the name of Sprague.

**COUNT ONE**
**STARR INDEMNITY & LIABILITY COMPANY v. EXXON MOBIL CORPORATION**
**(Negligence)**

20. The Plaintiff reiterates and reasserts its allegations contained in Paragraphs One (1) through Nineteen (19), inclusive, and incorporates same by reference herein.

21. Pursuant to the terms of the aforementioned Dock Use Agreement between the Plaintiff's insured, Sprague Energy Corp., and the Defendant, Exxon Mobil Corporation, the Defendant, by and through its agents and/or employees, was obligated to manage, control, supervise, and/or otherwise oversee the discharge and unloading operations on the Vessel and at the Dock.

22. The Defendant, by and through the Exxon PIC, was obligated under the aforementioned Agreement to manage, control, supervise, and/or otherwise oversee the safe discharge of asphalt from the Vessel to the Pipeline extending to Sprague's asphalt Plant on or around June 19, 2014.

23. The Defendant, by and through the Exxon PIC, had a duty to use reasonable care when connecting the cargo hose to the Vessel's manifold and securing same by the proper positioning and securing of the "saddle."

24. The Defendant breached its duties when, among other things, the Exxon PIC, and/or through other Exxon agents and/or employees, failed to properly position and/or secure the "saddle" to the subject cargo hose on or around June 19, 2014.

25. The improper positioning and/or securing of the "saddle" to the cargo hose and/or the Defendant's failure to properly manage, control, supervise, or otherwise oversee the discharge, directly and/or proximately caused the hose to bend and fracture during asphalt discharge operations.

26. The cargo hose fracture and escaping asphalt, as well as the subsequent cleanup efforts, further resulted in physical damage to, among other things, the Vessel, the hose(s) and other discharge equipment, and the Dock, as well as caused environmental contamination of the surrounding waters of the Mystic River in Everett, Massachusetts, for which the Plaintiff paid various sums and incurred costs and expenses to its insured, and for which the Defendant is liable, as set forth above.

WHEREFORE, the Plaintiff prays this Honorable Court determine the following:

1. The extent of the damages caused by the Defendant's actions and/or omissions, and award same to the Plaintiff.

2. Such other relief as this Honorable Court may determine.

**COUNT TWO**
**STARR INDEMNITY & LIABILITY COMPANY v. EXXON MOBIL CORPORATION**
**(Negligence; res ipsa loquitur)**

27. The Plaintiff reiterates and reasserts its allegations contained in Paragraphs One (1) through Twenty-Six (26), inclusive, and incorporates same by reference herein.

28. The spillage of approximately 4,200 gallons of asphalt does would not have ordinarily occurred without the Defendant's negligence.

29. The Defendant Exxon Mobil, had exclusive control over the unloading equipment and procedure, via the Exxon Mobil PIC, per the terms of the Dock Agreement.

30. Starr Indemnity & Liability Company was not negligent during the discharge procedure and its actions did not contribute to or directly and/or proximately cause the spill.

31. The cargo hose fracture and escaping asphalt, as well as the subsequent cleanup efforts, further resulted in physical damage to, among other things, the Vessel, the hose(s) and other discharge equipment, and the Dock, as well as caused environmental contamination of the surrounding waters of the Mystic River in Everett, Massachusetts, for which the Plaintiff paid various sums and incurred costs and expenses to its insured, and for which the Defendant is liable, as set forth above.

WHEREFORE, the Plaintiff prays this Honorable Court determine the following:

1. The extent of the damages caused by the Defendant's actions and/or omissions, and award same to the Plaintiff.
2. Such other relief as this Honorable Court may determine.

**COUNT THREE**
**STARR INDEMNITY & LIABILITY COMPANY v. EXXON MOBIL CORPORATION**
**(Breach of Implied Warranty of Workmanlike Performance)**

32. The Plaintiff reiterates and reasserts its allegations contained in Paragraphs One (1) through Thirty-one (31), inclusive, and incorporates same by reference herein.

33. In undertaking to perform services to facilitate the discharge of asphalt from the Vessel to the Pipeline extending to Sprague's asphalt Plant on or around June 19, 2014, through the connecting of cargo hoses to the Vessel's manifold and the positioning and/or securing of "saddle(s)" thereto, the Defendant, Exxon Mobil Corporation, warranted that it would do so in a workmanlike manner.

34. By improperly positioning and/or securing the "saddle" to the subject cargo hose, the Defendant, by and through the Exxon PIC, failed to perform those services in a workmanlike manner, thereby breaching the Defendant's implied warranty of workmanlike performance.

35. As a direct and proximate result of the Defendant, Exxon's, breach, the subject cargo hose fractured, spilling approximately 4,200 gallons of asphalt onto the Vessel, Dock facility, equipment, and surrounding waters of the Mystic River in Everett, Massachusetts, thereby causing property damage and environmental contamination for which the Plaintiff paid various sums and incurred costs and expenses to its insured, and for which the Defendant is liable, as set forth above.

WHEREFORE, the Plaintiff prays this Honorable Court determine the following:

1. The extent of the damages caused by the Defendant's actions and/or omissions, and award same to the Plaintiff.
2. Such other relief as this Honorable Court may determine.

**COUNT THREE**
**STARR INDEMNITY & LIABILITY COMPANY v. EXXON MOBIL CORPORATION**
**(Breach of Contract)**

36. The Plaintiff reiterates and reasserts its allegations contained in Paragraphs One (1) through Thirty-five (35), inclusive, and incorporates same by reference herein.

37. On or around February 5, 2001, the Plaintiff's insured, Sprague Energy Corp., and the Defendant, Exxon Mobil Corporation, entered into a Dock Use Agreement, including the Attachments, A and B, appended thereto, to govern vessel cargo discharge operations occurring at Berth 3 of the Defendant's Dock facility in Everett, Massachusetts.

38. Several provisions of the aforementioned Agreement, including the agreed-to Attachments, A and B, appended thereto, imposes an obligation on the Defendant, Exxon, to maintain, manage, control, supervise, and/or otherwise oversee such vessel cargo discharge operations at the Defendant's Dock facility in a manner so as to prevent pollution, unsafe conduct, and violation of terminal rules, among other things, regardless of the cargo's intended destination.

39. One or more provisions of the aforementioned Agreement, and the Attachments, A and B, appended thereto, allocate liability and costs for cargo spills and/or other environmental contamination solely on the Defendant, Exxon.

40. The Plaintiff's insured, Sprague Energy Corp., by and through its agents and/or employees, performed all of the conditions, covenants, and promises required by it to be

performed, in accordance with the terms and conditions of the aforementioned Agreement, and the Attachments, A and B, appended thereto.

41. The Defendant, Exxon, breached this Agreement, and/or the Attachments, A and B, appended thereto, when the Exxon PIC, and/or through other Exxon agents and/or employees, failed to properly position and/or secure the support "saddle" to the cargo hose discharging asphalt from the Vessel to the Pipeline extending to Sprague's asphalt Plant on or around June 19, 2014, which caused the subject cargo hose to fracture, thereby spilling asphalt onto the Vessel, the Dock facility, equipment, and the surrounding waters of the Mystic River in Everett, Massachusetts.

42. The spillage of asphalt, and the cleanup operations incident thereto, caused physical damage to property and environmental contamination of the surrounding waters, for which the Plaintiff paid various sums and incurred costs and expenses to its insured, and for which the Defendant is liable, as set forth above.

WHEREFORE, the Plaintiff prays this Honorable Court determine the following:

1. The extent of the damages caused by the Defendant's breach(es), and award same to the Plaintiff.
2. Such other relief as this Honorable Court may determine.

**COUNT FOUR**
**STARR INDEMNITY & LIABILITY COMPANY v. EXXON MOBIL CORPORATION**
**(Strict Liability)**

43. The Plaintiff reiterates and reasserts its allegations contained in Paragraphs One (1) through Forty-two (42), inclusive, and incorporates same by reference herein.

44. On or about June 19, 2014, the Defendant engaged in the abnormally dangerous activity of discharging hot asphalt from the *T/V PALANCA SINGAPORE*.

45. The hot asphalt escaped through a fracture in a cargo hose, running from *T/V PALANCA SINGAPORE*.

46. The escaping hot asphalt, as well as the subsequent cleanup efforts, further resulted in physical damage to, among other things, the Vessel, the hose(s) and other discharge equipment, and the Dock, as well as caused environmental contamination of the surrounding waters of the Mystic River in Everett, Massachusetts, for which the Plaintiff paid various sums and incurred costs and expenses to its insured, and for which the Defendant is strictly liable, as set forth above.

WHEREFORE, the Plaintiff, Starr Indemnity & Liability Company, prays that this Honorable Court determine the following:

1. The extent of the damages caused by the Defendant, Exxon Mobil Corporation, either through its negligence, breach of implied warranty of workmanlike performance, breach of contract, and/or its other acts and/or omissions, and award same to the Plaintiff, Starr Indemnity & Liability Company.
2. Such other relief as this Honorable Court may determine.

Respectfully submitted,
The Plaintiff,
By Its Attorney,

/s/ Seth S. Holbrook

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